Local 3, International Brotherhood of Electrical Workers, AFL-CIO *and* Telecom Equipment Corp. of New York, Inc. Case 29-CD-305

9 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

On 16 November 1983 Administrative Law Judge James F. Morton issued the attached decision. The Charging Party and the Respondent filed exceptions and supporting briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[1]

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.[3]

[1] Chairman Dotson did not participate in the underlying case reported at 266 NLRB 714 (1983).

[2] As more fully described in the judge's decision and in our 10(k) determination, Telecom Equipment Corporation (the Parent or TEC) underwent a reorganization in 1982 in which it became a holding company and established Telecom Equipment Corp. of New York (the Charging Party or Telecom-New York) and Central Communications Purchasing Corp. (CCPC) as subsidiaries. The Parent transferred its sales and installation functions and its warehousemen and expediters to the Charging Party and the purchasing operations of all subsidiaries to CCPC. The Charging Party assumed the warehousemen's and the expediters' collective-bargaining agreements which had earlier been executed by the Parent and the Respondent. The Respondent has excepted to the judge's finding that the Charging Party and CCPC are each (independent) employers within the meaning of the Act. In this connection, the Respondent excepts to his failure to find that the three companies are alter egos of one another and as such are bound by the collective-bargaining agreement covering expediters. It asserts that this contract contains an agreed-upon method of resolving the dispute.

At the unfair labor practice proceeding counsel for the General Counsel adduced evidence that the three corporations had filed with New York State and the State of New Jersey amendments to their certificates of incorporation that reflected changes in the names of the corporations. The judge permitted inquiry into the nature and effect of the name changes but precluded the Respondent from relitigating its alter ego contention. The judge found that the name changes did not affect the operations or structure of the companies.

Having previously found that the Charging Party and CCPC are independent subsidiaries of the Parent and that because CCPC was not a party to any collective-bargaining agreement there existed no agreed-upon method of resolving the dispute, we find that the judge properly restricted the scope of examination regarding the companies' name changes. Further, after carefully reviewing the record, we are convinced that the amendments to the names of the corporations were just that and did not affect the corporations' structures or operations or the relationship between them.

[3] The Charging Party excepts to the judge's failure to issue a broad order and to his failure to direct that the Respondent reimburse expenses incurred by the General Counsel and the Charging Party in connection with this proceeding. The Charging Party also excepts to the recommended Order because it fails to direct that the Respondent publish the attached notice to members in its union newspaper, mail copies of the notice of members, and publish the notice in a general circulation daily newspaper in the New York City metropolitan area. For reasons set forth in the 10(k) determination we find the recommended Order appropriate.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local 3, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, and representatives, shall take the action set forth in the Order.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. On May 2, 1983, the Board issued its Decision and Determination of Dispute in this case (reported at 266 NLRB 714). The Board there held that unrepresented employees employed by Central Communications Purchasing Corp. are entitled to perform the work in dispute which consists of the delivery of goods and equipment from the CCPC facility in Linden, New Jersey, to the facility of Telecom Equipment Corp. of New York, Inc. at Long Island City, New York. The Board further determined that Local 3, International Brotherhood of Electrical Workers, AFL-CIO (herein Respondent) is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Telecom Equipment Corp. of New York, Inc. to assign the disputed work to employees represented by Respondent. The Board directed Respondent to notify the Regional Director for Region 29 in writing, within 10 days from the issuance of that Decision and Determination of Dispute, whether or not it will refrain from engaging in conduct proscribed by Section 8(b)(4)(D) of the Act to force an assignment of the disputed work in a manner inconsistent with the Board's determination.

On June 17, 1983, the General Counsel issued a complaint against Respondent alleging that it had violated Section 8(b)(4)(D) of the Act and noted in that complaint that Respondent had failed and refused to notify the Regional Director for Region 29 that it would comply with the award. The complaint further alleges that the Charging Party and related companies named in the Board's Decision and Determination of Dispute in this case had changed their names. Respondent's answer places those allegations in issue and also presents for resolution the credibility issue referred to in the Board's Decision and Determination of Dispute, which issue is discussed in detail below.

I heard this case in New York City on July 7 and 8, 1983.

On consideration of the entire record in this case, and of the briefs filed by the General Counsel, the Charging Party, and Respondent, and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE CORPORATE CHANGES

Respondent in its answer and at the hearing questioned the General Counsel's assertion that the several companies involved in this case merely changed their names. I

permitted full inquiry into that matter to consider the possible impact of any other changes on the Board's award and on any remedial order that may be warranted.

The essentially uncontroverted testimony given at the hearing before me, together with related documentary evidence, establishes that the following corporate changes took place in 1982. Some of the changes were noted in the Board's Decision and Determination of Dispute issued on May 2, 1983; others were not so noted, either because they were not contained in the record underlying that determination or because they were alluded to in that record only in a peripheral way.

For several years prior to July 1982, Telecom Equipment Corp. (herein TEC), had been the name of a corporation of the State of New Jersey which was engaged in the business of installing and servicing private telephone systems, primarily for commercial enterprises in the New York City area. Its offices were located in Long Island City, New York. At that time TEC did its own purchasing of materials from outside vendors who either delivered those materials, via common carrier, to TEC jobsites throughout the metropolitan New York area or to TEC's warehouse facility in Long Island City. TEC then also did most of the purchasing for affiliated companies engaged in similar telephone system installation work in New Jersey and in areas of New York State outside the New York City metropolitan area. In July 1982, TEC ceased being an operating company and became a holding company. A number of corporations were formed in July 1982; their stock is owned by TEC.

On July 1, 1982, Telecom Equipment Corp. of New York, Inc. (herein Telecom-New York), was incorporated. It took over from TEC the business of installing and servicing the private telephone systems for commercial accounts in the New York City area. In effect it became the operating subsidiary of TEC for the New York metropolitan area.

Central Communications Purchasing Corp. (herein CCPC) was incorporated in July 1982 under the laws of the State of New Jersey. It was formed to do the buying of all materials and equipment for all the corporate subsidiaries of TEC. Its purchasing operations were set along the same lines as those formerly followed by TEC. Thus, CCPC ordered directly from vendors for all TEC subsidiaries; those vendors delivered the materials usually by common carrier directly to jobsites on which the employees of the TEC subsidiaries were installing or servicing equipment. In addition, CCPC operated its own warehouse in Linden, New Jersey (about 26 miles distant from the Long Island City, New York facility). Goods delivered by vendors to CCPC's Linden warehouse were later shipped by CCPC either by its own trucks or by common carrier to installation jobsites or to warehouse facilities of other TEC subsidiaries, including the Telecom-New York warehouse in Long Island City.

The Board in its Decision and Determination of Dispute, noted above, referred to TEC as the parent of Telecom-New York and also discussed the operations of CCPC.

On October 25, 1982, the certificate of incorporation for Telecom-New York was amended to reflect that its name was then being changed to Telecom Plus of Downstate New York (herein Downstate). On November 8, 1982, the name of the parent or holding company, TEC, was changed to Telecom Plus International Inc. (herein TEC International). Those amendments were not made part of the hearing held on November 29, 1982, pursuant to Section 10(k) of the Act. Obviously, the Board thus made no reference to any corporate name changes in its May 2, 1983 decision. Counsel for the Charging Party stated at the hearing before me that those changes were not made part of the 10(k) hearing as they were of no consequence.

On November 30, 1982, the corporate name of CCPC, as it appeared on its certificate of incorporation, was amended to read, Telecom Plus Supply Corp. (herein Supply).

At the hearing before me, the General Counsel adduced evidence which established that the operations of Telecom-New York as they existed in July 1982 continued unchanged after its corporate name was amended in November 1982 to Downstate; similarly the General Counsel offered evidence that the operations of CCPC continued unchanged after its name was amended to Supply. Further, the evidence offered by the General Counsel established that the only change made in the holding company was that its name was changed from TEC to TEC International. Respondent examined the General Counsel's witnesses at length respecting any other corporate changes that may have occurred. The totality of the evidence before me establishes convincingly that the only changes made in this case are that the names of the corporations involved had been changed. No useful purpose would be served by describing in detail the operations of each corporation then and now solely to conclude the obvious, that there have been no material changes in the operations of the respective corporations.

On the basis of the foregoing and the record as a whole, I find that Telecom-New York (herein called Downstate referred to as Telecom by the Board in its Decision and Determination of Dispute) and CCPC (now called Supply) are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

Respondent represents separate units of installers, warehousemen, and expediters employed by Telecom-New York (now Downstate). As noted above, materials purchased from vendors prior to July 1982 had been delivered by common carrier or vendor trucks directly to installation jobsites or to the Long Island City warehouse. In July 1982, CCPC (now Supply) took over the purchasing work previously done by TEC. The mechanics of delivering materials, however, to the Long Island City facility remained essentially unchanged, as the Board had noted in its Decision and Determination of

Dispute. Thus, vendors engaged by CCPC continued to make deliveries to the Long Island City facility, either directly or via drivers employed by CCPC who were unrepresented.

At the hearing pursuant to Section 10(k) of the Act in this case, evidence had been presented that on August 18, September 16 and 21, and again on October 4, 1982, employees at the Long Island City facility represented by Local 3 refused to accept deliveries from the CCPC warehouse. Respondent raised certain credibility issues in that proceeding by denying that it caused those work refusals. The Board made a finding that there was reasonable cause to believe that Respondent was responsible for those refusals. It is incumbent on me to resolve those credibility issues based on the record made before me.

At the hearing before me, the General Counsel adduced testimony from George Kavoures, the general manager of Supply, which tracked the account he gave at the 10(k) hearing in this case discussed in the Board's Determination. His testimony before me was uncontroverted. In substance, he related that on August 18 and September 16 and 21, 1982, Respondent's steward and the other employees of Telecom-NY at Long Island City refused to unload materials brought by CCPC which had been brought to the Long Island City warehouse by CCPC drivers or by common carrier. I credit Kavoures' account as it was not contested and as it appears that Respondent's basic contentions are that the employees acted without its authorization or in furtherance of a lawful object.

Respecting the issue of Respondent's liability for those refusals to accept deliveries and the object thereof, Kavoures and the Charging Party's vice president, Donald Gillespie, testified that Respondent's steward stated, in substance, that he, in refusing to unload those trucks, was following Respondent's orders to accept only deliveries made by expediters represented by Respondent. The CCPC drivers are unrepresented; the common carrier driver is not represented by Respondent. I credit those accounts of Kavoures and Gillespie as they were uncontroverted. Respondent sought to explain away its failure to call its steward to contest those contests by suggesting that its steward was no longer sympathetic to it by reason of a job promotion given him by the Charging Party.[1] That attempted explanation does not stand up because Respondent's steward had received that promotion while the work stoppages were taking place and, in any event, before he had testified in the 10(k) hearing on Respondent's behalf.

The General Counsel also offered testimony that Respondent's business agent, Dennis McSpedon, stated on September 21 and 24, 1982, that employees represented by Respondent were right to refuse nonunion deliveries and that expediters represented by Respondent should be used for such work. I credit that testimony over McSpedon's denials. His testimony that he "bawled (the steward) out" for refusing the deliveries did not ring true and as there was another and subsequent refusal by Respondent's steward and other employees to handle a CCPC delivery, i.e., one on October 4, 1982.

It is undisputed that Respondent has not written the Regional Director that it would comply with the Board's award.

IV. ANALYSIS

The credited evidence establishes that on four occasions employees represented by Respondent engaged in work stoppages because the drivers making the deliveries were not members of Respondent. The credited testimony establishes also that Respondent's steward actively participated in those work stoppages and that Respondent's business agent endorsed their actions. By those acts Respondent induced and encouraged employees it represented to refuse to handle those deliveries and Respondent also thereby coerced and restrained Telecom-New York (now Downstate) and CCPC (now Supply) with an object of forcing them to assign the work of transporting those materials to the Long Island City facility to employees represented by Respondent rather than to the unrepresented drivers employed by CCPC (now Supply) or to drivers represented by other labor organizations and employed by common carriers engaged by CCPC (now Supply) to make such deliveries.

Respondent has endeavored to avoid an adverse finding in this case by asserting that there exist provisions in the respective contracts it has with Telecom-New York (now Downstate) to resolve the work assignment dispute involved herein. The Board has already considered and rejected that contention and I am bound thereby. Respondent separately contends that there has been no continuing violation of the Act as it has done nothing since late 1982 other than it has failed and refused to notify the Regional Director for Region 29 as directed by the Board's Decision and Determination of Dispute that it would comply with the award. The Board however has repeatedly made it clear that it will issue an appropriate remedial order where a labor organization fails and refuses to send the Regional Director a written statement of its intent to accede to and abide by a work assignment order of the Board issued pursuant to Section 10(k) of the Act. The Board has observed that such a failure connotes "a lack of expression which clearly does not manifest the required good faith intent to abide by the Board's determination."[2] In those circumstances, I am compelled to find that Respondent has continued to demand the disputed work.

CONCLUSIONS OF LAW

1. Telecom Equipment Corp of New York, Inc. (now Telecom Plus of Downstate New York, Inc.); Central Communications Purchasing Corp. (now Telecom Plus Supply Corp.); and Telecom Equipment Corp. (now Telecom Plus International, Inc.) are each employers engaged in commerce and in an industry affecting com-

[1] He was promoted to a foreman, a position covered by Respondent's collective-bargaining agreement and which, according to the evidence given me, does not entail the performance of any supervisory function as contemplated by Sec. 2(11) of the Act.

[2] *Plumbers Local Union No. 741 (Ashton Co.)*, 259 NLRB 944 (1982), and cases cited therein.

merce within the meaning of Section 2(1), (2), (6), and (7) and Section 8(b)(4) of the Act.

2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(b)(4)(i) and (ii)(D) by having induced and encouraged employees of Telecom Equipment Corp of New York, Inc. (now Downstate) to engage in a work stoppage and has thereby threatened, coerced, and restrained Telecom Equipment Corp. of New York, Inc. (now Downstate) and Central Communications Supply Corp. (now Supply) with an object of forcing or requiring them to assign the work of delivering materials to the Long Island City facility to employees who are members of or represented by Respondent rather than to unrepresented drivers of CCPC (Supply) or by employees represented by any other labor organization, who are not members of Respondent.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and that it shall take certain affirmative actions found necessary to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Local 3, International Brotherhood of Electrical Workers, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to comply with the Board's Decision and Determination of Dispute issued on May 2, 1983.

(b) Inducing and encouraging individuals employed by Telecom Equipment Corp of New York, Inc. (now Telecom Plus of Downstate New York, Inc.) and other persons engaged in commerce, or in industries affecting commerce, to engage in a refusal in the course of their employment to perform services for their respective employers or threatening, coercing, or restraining Telecom Equipment Corp of New York, Inc. (now Downstate) and other persons engaged in commerce, and in industries affecting commerce, where an object thereof is to force and require Telecom Equipment Corp of New York, Inc. (now Downstate) or Central Communications Purchasing Corp., Inc. (now Telecom Plus Supply Corp.) to assign the work of transporting materials and equipment from the New Jersey facility of Central Communications Purchasing Corp., Inc. (now Supply) thereto a warehouse operated by Telecom Equipment Corp of New York, Inc. (now Downstate) in Long Island City, New York, to employees of Telecom Equipment Corp of New York, Inc. (now Downstate) who are members of, or represented by, Respondent, rather than to employees of Central Communications Purchasing Corp., Inc. (now Supply) or of common carriers engaged by Supply who are not members of, or represented by, Respondent.[4]

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act.

(a) Post in conspicuous places at its business offices and meeting halls, copies of the attached notice marked "Appendix."[5] Copies of said notice, on forms provided by the Regional Director for Region 29, after being signed by Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director for Region 29 signed copies of the notice for posting by Telecom Equipment Corp of New York, Inc. (now Downstate) and Central Communications Purchasing Corp., Inc. (now Supply), if willing, in places where they customarily post notices to their employees.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] The Charging Party's request for a broad order is denied for the same reasons given by the Board in its Decision and Determination of Dispute.

[5] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to comply with the Board's Decision and Determination of Dispute that employees of Central Communications Supply Corp. (now Telecom Plus Supply Corp.) are entitled to perform the work of delivering materials and equipment from that company's facility in Linden, New Jersey, to the warehouse operated by Telecom Equipment Corp of New York, Inc. (now Telecom Plus of Downstate New York, Inc.).

WE WILL NOT induce or encourage individuals employed by Telecom Plus of Downstate New York, Inc., or by other persons engaged in commerce and industries affecting commerce, to refuse to perform services for their respective employers or threaten, coerce, and restrain Telecom Plus of Downstate New York, Inc., and other employers engaged in commerce and in industries affecting commerce, where an object thereof is to force

or require Telecom Plus of Downstate New York, Inc. or Telecom Plus Supply Corp. to assign the above-mentioned work to employees represented by our labor organization rather than to employees of Telecom Plus Supply Corp. who are unrepresented or to employees who are represented by any other labor organization.

LOCAL 3, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO